

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

PAUL MUELLER COMPANY	)	CIVIL ACTION NO.
Plaintiff	)	4:10-CV-40002-FDS
	)	
v.	)	
	)	
FLUOR ENTERPRISES, INC.,	)	
BRISTOL-MYERS SQUIBB COMPANY	)	
and E.R. SQUIBB & SONS, LLC	)	
Defendants	)	
	)	

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT**  
**FLUOR ENTERPRISES, INC.**

Defendant Fluor Enterprises, Inc. ("Fluor"), by and through its attorneys, Pepe & Hazard LLP, responds to Plaintiff's Complaint as follows:

1. Fluor denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation contained in paragraph 1.
2. Fluor denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation contained in paragraph 2.
3. Fluor denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegation contained in paragraph 3.
4. Fluor admits that it is a California corporation with a principal place of business in Irving, Texas.
5. Fluor admits that it entered into a contract with Tenant to provide engineering and design services and to serve as its procurement agent for construction. Fluor denies the remaining allegations of paragraph 5.
6. Fluor admits that while acting solely as the disclosed agent of Defendant Bristol-Myers Squibb Company (hereinafter "BMS") it entered into a purchase order with Plaintiff for the supply of process modules and services, including assistance in assembly as specified in the purchase order. Fluor denies knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations of paragraph 6.

7. Fluor admits that Plaintiff furnished labor and materials pursuant to its purchase order and admits that while acting in its capacity as agent for BMS, Fluor ordered such labor and materials. Fluor denies knowledge or information sufficient to form a belief as to the truth or accuracy of the remaining allegations of paragraph 7.

8. Fluor denies that it owes Plaintiff the amounts alleged as Fluor was, at all times, acting solely as agent for BMS. Fluor admits that Plaintiff demanded payment of it and that Fluor, as agent for and at the direction of BMS, refused to pay the claimed amounts. Fluor denies the remaining allegations of paragraph 8.

9. Fluor denies that it owes Plaintiff the amounts alleged as Fluor was, at all times, acting solely as agent for BMS. Fluor admits that Plaintiff demanded payment of it and that Fluor, as agent for and at the direction of BMS, refused to pay the claimed amounts. Fluor denies the remaining allegations of paragraph 9.

10. Fluor denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 10.

11. Fluor denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations of paragraph 11.

### **Affirmative Defenses**

#### **First Affirmative Defense**

Plaintiff has failed to state a claim upon which relief may be granted.

#### **Second Affirmative Defense**

Plaintiff has failed to mitigate its damages.

#### **Third Affirmative Defense**

Plaintiff's action is barred as, per the terms of its subcontract, Plaintiff acknowledged that Fluor was acting solely as agent for BMS and Fluor would have no liability to Plaintiff for payment of any amounts due to Plaintiff under its subcontract.

**Fourth Affirmative Defense**

Any amounts allegedly owed to Plaintiff are subject to set-off.

DEFENDANT,  
FLUOR ENTERPRISES, INC.

By: /s/ David P. Russman

David P. Russman (BBO 567796)  
Pepe & Hazard LLP  
One Financial Center  
655 Atlantic Avenue, 15<sup>th</sup> Floor  
Boston, MA 02111  
Tel: 617-748-5500  
Fax: 617-748-5555  
[drussman@pepehazard.com](mailto:drussman@pepehazard.com)

Dated: January 12, 2010

**CERTIFICATION**

This is to certify that a copy of the foregoing was mailed, postage prepaid, on this 12<sup>th</sup> day of January, 2010, to the following:

Leonard M. Krulewich, Esq.  
Leonard M. Krulewich & Associates  
29 Crafts Street, Suite 420  
Newton, MA 02458  
(617) 581-6116

Todd S. Holbrook, Esq.  
Morgan Lewis  
225 Franklin Street, 16<sup>th</sup> Floor  
Boston, MA 02110-4104  
(617) 341-7888

/s/ David P. Russman

David P. Russman